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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,563	10/24/2003	Matt F. Surowiecki		2426

7590 11/29/2006
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EXAMINER

CHAPMAN, JEANETTE E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/694,563	Applicant(s) SUROWIECKI, MATT F.	
	Examiner Chapman E. Jeanette	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2003.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1 and 5 is/are rejected.
 7) ☒ Claim(s) 2-4, 6-8 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

35 USC 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (3465488) in view of Osterle et al (6428258), Defrancesco et al (5685121) and Hauser (3492906). Miller discloses a structural wall comprising:

- An elongatedupper channel member 10 having spaced apart side walls 11 defining an upper channel space between them
- An upwardly opening lower stud 1 having spaced side wall defining a lower channel space
- An elongated sheet metal stud 2
 - An upper end sized to fit within the upper channel space and including spaced apart side walls that are contiguous with the side walls 11 of the upper channel 10 when the upper end of the stud is within the upper channel space
 - A nail
 - One side of the upper end of the stud including a longitudinal slot capable of receiving the unthreaded portion of the shank of the screw fastener; this statement of intended use has not positively claimed the structure combination but merely recites what the structure is capable of doing; the slot is probably wider than the screw

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- A lower end portion that fits within and is connected to the lower channel

Miller lacks the recited slots does the stud of Defrancesco et al to secure building parts together. The slot is long enough to permit vertical movement of the stud relative to the screw or nail and the upper channel

Miller lacks the screw with the recited features. Osterle discloses a screw having;

- a head 5 and
- a shank 1,4 connected to the head;
- the shank having a threaded end portion 3, 4 and a shank portion 1,11 without threads between the threaded end 3,4 and the head 5
- the threaded portion of the shank includes an end thread space close to the upper end of the stud;

Osterle's screw is capable of being connected to the side wall of the upper channel 10 of Miller with its shank extending through the slot and the unthreaded portion of the shank in the slot. Again stating what structure is "adapted to do" is not positively claiming the structure but merely alleges what the structure can do. Further, using the screw of Osterle would mean that the threaded portion of the screw would be free of connection with the stud as the unthreaded portion of the screw of Hauser. Hauser discloses an end thread wider than the slot or opening so that it will contact the structural member on the sides of the opening and prevent the screw from being pulled out of the slot.

In view of the above, it would have been obvious to one of ordinary skill in the art to modify Miller to include the slot to provide adjustability in securing the channel to the stud and

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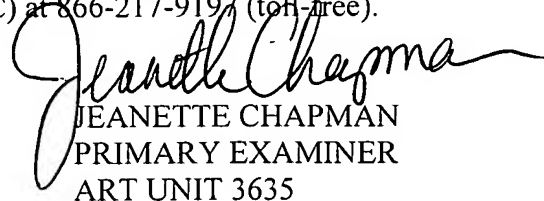
to employ the recited screw secured to the stud and channel as recited to provide a secure fit between building parts as shown by the cited secondary references.

Claims 2-4 and 6-8 are objected to as depending upon a rejected base claim but would be considered allowable if amended to include the base claim and any intervening claims

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on 571-272-6848. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JEANETTE CHAPMAN
PRIMARY EXAMINER
ART UNIT 3635
